

## **REMARKS**

Claims 1-9 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Claims 10-11, 13-14, 16, 20-21, 24-26, 28 and 30 stand rejected under 35 U.S.C. § 102(a) as being anticipated by United States Patent Application number 2003/0079154 by Park et al. (hereinafter “Park”). Claims 12, 22, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Park in view of United States Patent Application number 2003/0187859 by Belov (hereinafter “Belov”). Claims 15, 23, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Park in view of United States Patent Number 6,647,510 to Ganesh et al. (hereinafter “Ganesh”). Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Park in view of United States Patent Number 5,291,490 to Conti et al. (hereinafter “Conti”). Claim 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Park in view of United States Patent Number 6,018,810 to Olarig (hereinafter “Olarig”).

For the Examiner’s convenience and reference, Applicants’ remarks are presented in substantially the same order in which the corresponding issues were raised in the Office Action. Please note that the following remarks are not intended to be an exhaustive enumeration of the distinctions between any cited references and the claimed invention. Rather, the distinctions identified and discussed below are presented solely by way of example to illustrate some of the differences between the claimed invention and the cited references.

Claims 24 and 26 are amended to remove elements without antecedent basis.

Response to rejections of claims under 35 U.S.C. § 101.

Claims 1-9 stand rejected under 35 U.S.C. § 101 as directed to non-statutory subject matter. Applicants have amended claims 1, 4, and 9 to specify that each module comprises a computer readable program on a computer readable medium that executes on the second computer. The amendment is well supported by the canceled claim 5 and by the specification, which discloses the modules as software instructions and residing within the second computer. Page 8, ¶ 27; page 15, ¶ 46.

The Commissioner has stated, "...that computer programs embodied in a tangible medium, such as floppy diskettes, are patentable subject matter under 35 U.S.C. § 101 and must be examined under 35 U.S.C. § 102 and 103." *In re Beauregard*, 53 F.3d 1583, 1584 (Fed. Cir. 1995). Because as amended claims 1-4 and 6-9 are directed to computer programs on a tangible medium, Applicants submit that claims 1-4 and 6-9 are allowable. Claim 5 is canceled.

Response to rejections of claims under 35 U.S.C. § 102.

Claims 10-11, 13-14, 16, 20-21, 24-26, 28 and 30 stand rejected under 35 U.S.C. § 102(a) as being anticipated by Park. Applicants respectfully traverse this rejection.

Applicants have amended claims 10, 20, 25, and 30 to clarify that the second computer detects the failure of the first computer, and recovers the first computer. The amendments are well supported by the specification, which teach the second computer detecting the failure of the first computer and recovering the first computer. Page 11, ¶ 36 – page 14, ¶43.

In contrast, Park teaches an external element, the software rejuvenation module, detecting

the failure of the first computer (primary server) and directing the second computer (spare server) to recover the first computer. Park, page 5, ¶ 60, fig. 5, ref. 502. However, Park does not disclose the second computer detecting the failure of the first computer and recovering the first computer. Applicants therefore submit that because Park does not teach each element of claims 10, 20, 25, and 30, that the claims are allowable. Applicants further submit that claims 11, 13-14, 16, 21, 24, 26, and 28 are allowable as depending from allowable claims.

Response to rejections of claims under 35 U.S.C. § 103(a)

Claims 12, 22, and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Park in view of Belov. Claims 15, 23, and 27 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Park in view of Ganesh. Claim 17 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Park in view of Conti. Claim 18 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Park in view of Olarig. Applicant respectfully traverses these rejections.

Applicants have amended independent claims 10, 20, 25 and 30 with the limitations of claims 15, 23, and 27, including the limitation of “...backing out an in-flight transaction update of the first computer by writing a before image derived from an undo log to files on a disk...” from claims 15, 23, and 27 and lines 3-5 of paragraph 42 of the specification. Claim 10 as amended. See also claims 20, 25, and 30 as amended. Applicants therefore address the rejections of claims 15, 23, and 27 with regards to claims 10, 20, 25 and 30.

Park does not teach the limitation of backing out an in-flight transaction update. Ganesh

teaches removing changes made by a dead transaction for a database. Ganesh, Abstract.

However, Ganesh does not teach writing a before image derived from an undo log to files on a disk. Applicants therefore submit that claims 10, 20, 25 and 30 are allowable.

Applicants also submit that claims 12, 17-19, 22, and 29 are allowable as depending from allowable claims. Claims 15, 23, and 27 are canceled.

Applicants further submit that Park should not be considered in view of Ganesh as removing changes in a database as disclosed by Ganesh embodies substantially different functions, structures, and results from the present invention, which is directed to cluster servers.

With regards to claim 17, Applicants further submit that Park should not be considered in view of Conti as there is no suggestion to combine the nodes on a network as disclosed by Conti with the improving software availability of Park. Applicants further assert that there is no suggestion to combine the fault-tolerant data path of Olarig with the improving software availability of Park. Applicants therefore submit that claims 17-19 are allowable.

Should additional information be required regarding the traversal of the rejections of the claims enumerated above, Examiner is respectfully asked to notify Applicants of such need. If any impediments to the prompt allowance of the claims can be resolved by a telephone conversation, the Examiner is respectfully requested to contact the undersigned.

Respectfully submitted,

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